

**Compilation Report on the Procurement
of Commonwealth Utilities Corporation's
Proposed 80/60 Megawatts Power Plant Project
Fiscal Years 1997 through 2001**



EXECUTIVE SUMMARY

Commonwealth Utilities Corporation - Compilation Report on the Procurement of Proposed 80/60 Megawatts Power Plant Project

Report No. M-02-08, October 7, 2002

Summary

The former Chairman of the House Committee on Public Utilities, Transportation & Communication requested OPA to perform a survey addressing CUC's 80/60 megawatt ("MW") power plant project for Saipan. Following meetings with the former Committee Chairman and with CUC officials, OPA agreed to focus on (1) collecting historical background information on the project and (2) identifying and compiling related CUC costs. Based on a review of documents and information obtained, OPA compiled a chronology and accounting of the project.

This compilation report does not constitute an audit as defined by Government Auditing Standards issued by the Comptroller General of the United States. OPA did not conduct tests of records or perform other auditing procedures considered necessary when conducting audits.

- In 1997, CUC initiated the process to install an expanded power generation plant for Saipan. In February of that year a request for proposals ("RFP") was issued for A&E firms to assist CUC develop an RFP for an 80 MW power generation system. Two and a half months later, CUC cancelled the RFP, deciding instead to prepare one in-house so as to expedite the procurement process. A new RFP was published in May 1997 soliciting proposals from independent power producers ("IPP") for an 80 MW power generation facility in Saipan.
- CUC received 13 proposals from IPPs worldwide and determined in November 1997 that six were within the competitive range. Ten days after notifying the 13 IPPs of the evaluation results, the first of several protests was filed alleging improper procurement practices.
- More than 20 months after the initial RFP was issued, CUC published in November 1998 another RFP soliciting an independent firm to re-evaluate the initial 13 proposals received. In January 1999, CUC awarded a contract to Burns & McDonnell to perform the re-evaluation. In June, CUC requested "best and final offers" from the nine firms determined to have submitted proposals within the competitive range.
- Burns & McDonnell ranked Enron International Mariana Power Company ("Enron Marianas") the highest among the qualified firms. However, rather than immediately negotiating with Enron Marianas, CUC decided instead to reassess Saipan's power needs in light of changing economic conditions. Hired by CUC to perform the reassessment, Burns & McDonnell recommended in December 1999 that the power generation capacity to be solicited be reduced from 80 MW to 60 MW. Accordingly, In January 2000 CUC cancelled the RFP for an 80 MW power generation system and directed its management to award a contract for a 60 MW plant.
- The CNMI Legislature disagreed with CUC's decision. Public Law 12-1, the Energy Sufficiency Assurance Act, was enacted in March 2000 which, in effect, revoked CUC's cancellation of the RFP. The Act also required CUC to award a contract only to an offeror who provides "low speed generators" and mandated that the award be made within 60 days of its enactment to the highest ranked offeror.
- Two months later, in May 2000, CUC conditionally awarded the project to Enron Marianas on the basis that its best and final offer ranked highest, and, further, that it was the only offeror who provides "low speed generators". In June, 3 new protests filed against the award were denied by CUC and subsequently appealed to OPA in September. OPA dismissed the appeals on the grounds that Public Law 12-1 overrides OPA's jurisdiction to review issues raised pursuant to the project.



- In October 2000, 44 months after the initial RFP, CUC began negotiations with Enron Marianas.
- The following year, in March and April 2001, Enron Marianas' parent company notified CUC that it had decided not to pursue the power generation project, stating that the project was no longer consistent with the firm's goals. In July 2001, the General Manager of Enron's Guam company notified CUC that the earlier withdrawal of interest had no force or effect. Based on these communications with Enron, continuation of negotiations with the company was no longer certain.
- In October 2001, CUC contracted again with Burns & McDonnell to reassess power needs on Saipan. Citing revised load forecasts, the firm recommended cancellation of the project, noting that it is "...not needed, nor ... in the best interest of CUC". The AGO advised CUC to proceed with Burns & McDonnell's recommendation to cancel the project. Two months later, Enron announced that it had filed for Chapter 11 bankruptcy.

CUC incurred nearly \$2 million in expenses related to the power project from 1997 through 2001. These include professional fees, travel expenditures, rentals, and demolition costs related to the project. Based on our analysis, 57% of the expenditures were incurred after Public Law 12-1 was enacted in March 2000.

	FY 1998	FY 1999	FY 2000	FY 2001	Total
<u>Before Passage of Public Law 12-1</u>					
Travel	\$54,728	\$3,623	-	-	\$58,351
Professional Services	60,619	160,254	127,286	30,640	378,799
Rental Costs		213,722	178,398		392,120
	115,347	377,599	305,684	30,640	829,270
<u>After Passage of Public Law 12-1</u>					
Travel	-	-	39,380	93,653	133,033
Professional Services	-	-	32,958	393,642	426,600
Rental Costs			178,398	387,129	565,527
	-	-	250,736	874,424	1,125,160
Total Project Expenditures	\$115,347	\$377,599	\$556,420	\$905,064	\$1,954,430

CUC disagreed that rental costs should be included in our analysis. According to CUC officials, the relocation to new rental space was not due to the power project but rather to fire and safety hazards at the old location. OPA, however, found no supporting technical evaluation supporting this contention. Board meeting minutes and other documents and records obtained from CUC show that the relocation was primarily to make way for the power project. CUC also pointed out certain limitations in OPA's report, stating that the report does not address the basis for decisions made, internal and external factors affecting the project, and changing legal requirements. OPA agrees as such analyses were not part of the objectives of this report.



A copy of this report is available at the Office of the Public Auditor

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October 7, 2002

The Honorable Joseph P. Deleon Guerrero
Chairman, House Committee on Public Utilities, Transportation and Communication
Thirteenth Northern Marianas Commonwealth Legislature
P.O. Box 500586
Saipan, MP 96950

Dear Chairman Deleon Guerrero:

Subject: Compilation Report on the Procurement of Commonwealth Utilities Corporation's Proposed 80/60 Megawatts Power Plant Project Covering Fiscal Years 1997 through 2001(Report No. M-02-08)

This report presents the Office of the Public Auditor's (OPA) compilation of information concerning the Commonwealth Utilities Corporation's (CUC) 80/60¹ megawatts (MW) Saipan power plant project. This compilation report is being provided pursuant to a CNMI legislative request. Please note that this compilation of information does not constitute an audit as defined by Government Auditing Standards issued by the Comptroller General of the United States, and therefore should not be considered an audit report. OPA did not conduct test of records or perform other auditing procedures considered necessary when conducting an audit.

BACKGROUND

In his letter dated November 13, 2001, the former Chairman of the House Committee on Public Utilities, Transportation & Communication requested OPA to perform a survey addressing CUC's 80/60 MW power plant project (hereinafter referred to as "Saipan Power Plant Project"). After a meeting with the former Committee Chairman, OPA agreed to focus on: (1) collecting historical background information on the project and (2) identifying related CUC costs.

Commonwealth Utilities Corporation

The Commonwealth Utilities Corporation (CUC) was established by law (4 CMC §8111 et. seq.) as a public corporation responsible for supervising the construction, maintenance, operation, and regulation of all CNMI utility services, including power, sewage, refuse collection, telephone, cable television, and water. Accordingly, CUC can:

¹ This project originally required 80 MWs of power generation, but was later scaled down to 60 MWs.

- make contracts and execute all instruments necessary or convenient to exercise powers of the corporation pursuant to public notice and bidding;
- control the construction, management, and operation of the water, sewer and electrical power system in a public manner that is both timely and fair to the government, its employees, and utility service consumers; and
- engage the services of independent experts, advisors, and contractors.

In 1993, CUC hired R.W. Beck & Associates, an independent consultant to conduct a study on the future power generation and distribution needs on Saipan. The consultant's report, dated November 5, 1993, concluded that "The CUC will require a significant amount of new generation during the next 20 years...." The report showed several forecasts of the rate of load growth (of needed power generation) and further concluded that:

If loads grow as projected in the high load growth scenario, over 130 MW of additional capacity will be needed by the year 1998 and over 300 MW by the year 2011. In contrast, if loads grow as projected in the low load growth scenario, 21 MW of additional capacity would be required by 1998 and only about 100 MW by the year 2011.

On May 29, 1997, CUC published a request for proposal (RFP #97-0025) requesting that independent power producers (IPPs) submit proposals for an 80 MW power generating system for Saipan. When CUC developed this proposal it decided to forego an earlier RFP 97-0016, issued on February 14, 1997, where it had solicited proposals from qualified architectural and engineering firms to develop an RFP for an 80 MW power generation system. Under this new RFP, CUC solicited proposals to directly procure a power generation system. On April 2001 four years after CUC published the 1st RFP, Enron International Marian Power Company, Inc. (Enron Marianas), the selected proposer under the 2nd RFP, abruptly ceased negotiations. Certain events occurred during this period that significantly prolonged the completion of the procurement/negotiation of the power generation plant.

Objectives, Scope and Methodology

The objectives of our survey were to:

- provide a history of the project's procurement process, from the solicitation of proposals phase to the termination of negotiations with the selected offeror, and
- identify travel, professional services and other CUC costs related to the power plant project.

In conducting the survey OPA : (a) compiled information and related documents provided by CUC, (b) researched OPA's files on related procurement appeals, (c) interviewed knowledgeable CUC employees, (d) obtained documents from other government agencies, and (e) interviewed

knowledgeable Department of Public Works employees. This compilation report is based only on information locally available.

This report does not constitute an audit report as defined by generally accepted auditing standards as OPA did not conduct tests of records or perform other auditing procedures considered necessary when conducting an audit.

HISTORY OF THE PROJECT'S PROCUREMENT PROCESS

Almost four years elapsed between the initiation of the procurement process for this power generation system and receipt of an independent report that concluded that installation of 60 MW of capacity and a 115kV transmission system on Saipan were no longer needed nor in the best interest of CUC. The report also concluded that given the current and forecasted load conditions in Saipan, CUC should abandon the IPP approach it was pursuing under RFP-0025. During this four-year period CUC: (1) evaluated and re-evaluated proposals, (2) adjudicated protests, (3) negotiated with the selected offeror, and (4) evaluated Saipan's changing power supply needs. A summary of events surrounding the procurement of this project from Fiscal Years 1997 through 2001 follows.

Fiscal Year 1997

In early 1997, CUC published its first request for proposal in connection with its plan to procure an 80 MW power generation system. More specifically, on February 14, 1997, CUC published RFP 97-0016 to solicit proposals from qualified architectural and engineering firms to assist CUC in developing the RFP and review the expected proposals for the 80 MW power generation system. However, two-and-a-half months later, the Board chairman decided to cancel the RFP so as to expedite the procurement process. Rather than contract with architectural and engineering professionals to develop an RFP, CUC decided to instead prepare the RFP in-house. Subsequently on May 29, 1997, CUC published RFP 97-0025 thereby soliciting proposals from IPPs for an 80 MW power generation facility in Saipan.

Fiscal Year 1998

CUC received thirteen proposals from IPPs worldwide pursuant to RFP 97-0025, and on November 14, 1997, CUC determined that six were within the competitive range. It accordingly notified all 13 about evaluation results. Ten days later on November 24, 1997, CUC received the first of several protests filed. One offeror, excluded from the competitive range, filed a protest alleging that CUC had no factual or legal basis for disallowing it from further participation in the procurement. CUC denied the protest but the offeror subsequently appealed to OPA. In June 1998, OPA granted the appeal in part and concluded that CUC, in determining the competitive range, had not complied with CUC Procurement Regulations. OPA recommended that CUC redetermine the list of those offerors who were in the competitive range. CUC, however, subsequently appealed twice to OPA for reconsideration, and as a result this first protest was not fully settled until October 1998.

While the first protest remained unsettled, CUC went forward and on March 6, 1998, asked for the best and final offers from the initial six offerors. On September 15, 1998, the CUC board of directors approved the final power purchase agreement with Marubeni Corporation/Sithe Energies, Inc. (Marubeni/Sithe).

CUC subsequently found it necessary to reevaluate the 13 proposals received under RFP 97-0025 because of protests and appeals received and because of OPA's decision and recommendation that CUC redetermine which offers were in the competitive range. Also, CUC's decision not to hire an architect and engineering firm was subject to criticism. One proposer stated that without the benefit of expert advice, CUC was unable to effectively plan the solicitation of proposals (for power generation) or evaluate the proposals received. The numerous protests filed seemingly validated such criticism.

Fiscal Year 1999

On November 1, 1998, more than 20 months after issuance of the first RFP, CUC issued RFP 99-003 to solicit the services of an engineering firm to re-evaluate the competitive range for the 13 proposals. This new RFP practically nullified the previous selection of Marubeni/Sithe as the most qualified proposer. It also enabled OPA to suspend two pending protest appeals.

Pursuant to this RFP, CUC on January 25, 1999, contracted Burns & McDonnell, an off-island engineering firm, and on April 23, 1999, this firm provided CUC with a short list of 9 proposers who were within the competitive range. On June 4, 1999, CUC sent these 9 its "Request for Best and Final Offer" so that it could make its final selection. However, by the June 18, 1999 submission due date, only 5 of the 9 had submitted their best and final offers.

Fiscal Year 2000

On October 13, 1999, 32 months after the original RFP, CUC received the final selection. Based on an evaluation by Burns & McDonnell, Enron Marianas, an indirect wholly-owned subsidiary of Enron Corporation (Enron as referred to in this report) received the highest score.

Rather than immediately negotiating with Enron Marianas, CUC's board of directors decided to instead reassess Saipan's power needs in light of economic conditions then existing. More specifically, on November 8, 1999, the board awarded a contract to Burns & McDonnell "to evaluate power supply options". Subsequently on December 30, 1999, Burns & McDonnell recommended, on the basis of its evaluation, that the power generation capacity to be solicited be reduced to 60 MW.

On January 13, 2000, the CUC Board cancelled RFP 97-0025 and directed CUC management to award a contract for construction of a 60 MW rather than a 80 MW power plant. The CNMI Legislature, however, disagreed with CUC's decision and subsequently enacted Public Law 12-1 (the Energy Sufficiency Assurance Act of 2000) on March 31, 2000. This Act, which revoked CUC's cancellation of RFP 97-0025, mandated that CUC award the power generation project to

the highest ranked offeror selected pursuant to the provisions of RFP 97-0025, and required that the contract be awarded within 60 days of the Act.

On May 26, 2000, about 39 months since the first RFP, CUC conditionally awarded the project to Enron Marianas, the highest-ranked offeror, on the basis that:

- Enron Marianas ranked first in the September 1999 evaluation of best and final offers for the 80 MW power plant project, and
- Enron Marianas alone complied with PL 12-1 which required that CUC award a contract only to an offeror who provides low speed generators, as recommended by Burns & McDonnell. Of the five offerors submitting their best and final offers, only Enron Marianas provided low speed generators.

In June 2000, after the conditional award to Enron Marianas, CUC received three additional protests which it denied on September 1 and 18, 2000. Those denials were appealed to OPA who, on February 5, 2001, dismissed such appeals on the grounds that PL 12-1 overrides OPA's jurisdiction to review issues raised pursuant to CUC RFP 97-0025.

CUC spent the period between June and September 2000 seeking legal representation and preparing for negotiations with Enron Marianas. Between September 15 and October 6, 2000, seven CUC representatives went to Honolulu and Houston to meet with Fulbright & Jaworski² and Burns & McDonnell, the power generation consultant.

Fiscal Year 2001

In October 2000, 44 months after issuance of the original RFP, CUC began negotiating with Enron Marianas, and five CUC representatives visited Honolulu and Los Angeles between October 17 and November 1, 2000 for off-island negotiations.

On March 19, 2001, Enron's vice president sent a letter to CUC's legal consultant for the project, Fulbright & Jaworski, stating that Enron had decided not to pursue the Saipan Power Project. He indicated that Enron's partner in the procurement of the project, Burmeister & Wein, had, however, indicated a desire to continue the project. On April 5, 2001, Enron sent a similar letter to CUC stating that the company's business strategy had changed and that its pursuit of the Saipan Power Project was no longer consistent with the firm's goals. CUC apparently lacked a clear explanation for Enron's withdrawal because Enron did not elaborate on why it had terminated contract negotiations.

Later, the general manager of Enron Guam Piti Corporation (Enron-Guam) contacted CUC and claimed that Enron's earlier withdrawal had no force or effect. More specifically, in a July 25, 2001 meeting, he represented that he was speaking for Enron and that it was his opinion that "there was still a contract award outstanding as far as Enron is concerned." Subsequently, Enron-Guam

²A law firm hired to provide legal representation to CUC concerning the proposed 60 MW power generation project in Saipan.

submitted a new proposal to CUC the terms of which included the transfer of power plant operations to Burmeister & Wein and to Mitsue Engineering with Enron-Guam remaining as part of the commercial team.

After Enron's vice president was requested to clarify the situation, he faxed a September 4, 2001 letter to CUC's legal counsel clarifying the role of the Enron-Guam general manager. In that letter he stated that an officer of Enron-Guam had assumed responsibility for transitioning the project from his oversight and that this individual was charged with continuing discussions with the CUC related to the conditional award of contract. By August 2001, the continuation of negotiations with Enron were no longer certain for a number of reasons:

- Enron's vice president had stated that Enron was no longer interested in pursuing the Saipan Power Project;
- The role of the new proposer, Enron-Guam, was not clear, and there was no evidence that Enron-Guam could actually take over the negotiations pursuant to the terms of the RFP and in accordance with the CUC procurement regulations. Enron-Guam's new proposal indicated that Enron would play a lesser role as a commercial agent with both "Burmeister & Wein" and "Mitsue" taking over power plant operations.
- Finally, there was a question as to the economic cost-benefit of Enron's proposed power generation project given the economic conditions and projections of current and future power generation needs on Saipan.

Additional Events Subsequent to Fiscal Year 2001

On October 18, 2001, pursuant to CUC's request, Burns & McDonnell issued a supplement to its December 1999 report stating that, after review of generation and transmission expansion, it believes that Saipan no longer needed 60 MW of additional capacity and a 115kV transmission system. More specifically:

“... the installation of 60 MW of capacity and the 115kV transmission system on the island of Saipan are not needed, nor are they in the best interest of CUC. With the current and forecasted load conditions, the IPP approach pursued by the RFP-0025 should be abandoned.”

Upon receipt of the Burns & McDonnell's report on October 18, 2001, the CUC Executive Director requested a supplementary advisory opinion from the Office of the Attorney General as to possible future actions of CUC in compliance with Public Law 12-1. The supplementary advisory opinion was issued by the Office of the Attorney on October 23, 2001 which stated in part the following:

- “From a reading of the report, reasonable minds could not differ on the conclusion that the RFP should be cancelled due to the presence of clear and convincing evidence that it is no longer in the best interests of CUC or the CNMI. As such any decision contrary by CUC

would be in violation of Public Law 12-1 and a breach of its fiduciary duty to the citizens of the Commonwealth...”

- It is therefore advisable that your office proceed in its recommendation to the board in accordance with your conclusion based upon the Burns and McDonnell report dated October 18, 2001, in the cancellation of the RFP 97-0025 in accordance with Public Law 12-1, CUC Procurement Regulations Section 3-201 and this advice.”

Accordingly, CUC officials canceled RFP 97-0025. On December 2, 2001, Enron announced that it had filed for Chapter 11 bankruptcy protection.

EXPENDITURES RELATED TO THE SAIPAN POWER PROJECT

CUC incurred almost \$2 million in professional fees, travel, rental, and demolition costs in connection with the procurement of the Saipan Power Project during fiscal years 1998 to 2001.

	Fiscal Year 1998	Fiscal Year 1999	Fiscal Year 2000	Fiscal Year 2001	Total
Travel	\$54,728	\$3,623	\$39,380	\$93,653	\$191,384
Professional Services	60,619	160,254	160,244	424,282	805,399
Rental Costs ³		213,722	356,796	387,129	957,647
Total Expenditures	\$115,347	\$377,599	\$556,420	\$905,064	\$1,954,430

Table 1 Details of Expenditures Incurred Related to Saipan 80/60 MW Project

The \$191,384 spent for travel was mostly for off-island trips by CUC Board members and officers involved in meetings with the U.S.-based legal and engineering consultant as well as for negotiations with Enron representatives. This represented 18 percent of CUC’s \$1,052,204 in travel expenses during the 4-year period. The largest single cost was a \$40,000 trip to Los Angeles in February 2001 for the project negotiations. See **Appendix B** for details of CUC travel associated with the Project.

Over half of the \$805,399 in professional fees were for legal representation, technical evaluation of proposals, preparation of the power purchase agreement, evaluation of power supply options, and review of generation and transmission expansion. This represents 18 percent of the \$4,399,274 in total professional fees that CUC incurred during the same period. **Appendix C** shows the individual professional contracts that CUC executed for the Project.

CUC incurred \$957,647 for rent in relocating its CUC offices from Lower Base to Dandan necessitated by the plan to procure the power plant project. CUC officials disagreed that rental costs associated with the office relocation should be included in compiling the total cost for the

³The rental covers office spaces for CUC’s administration section and billing and collection section at the Joeten Dandan Building as well as the parking space for its motor pool from March 1999 when CUC opened the Dandan office until September 2001.

Saipan Power Project. They stated that the relocation had nothing to do with the power project, and that they relocated because the Lower Base building was condemned due to fire and safety hazards. CUC suggested that OPA ask the Department of Public Works (DPW) about an evaluation of the old CUC building and the adjacent DPW building. OPA, however, found no technical evaluation to support the condemnation of both buildings but a survey had been conducted to determine which sections of the DPW building could be used by their Technical Service Division.

Our review of Minutes of CUC Board meetings, Office of Public Land records, and other documents as summarized below showed that the CUC Administration Offices were relocated primarily because of the planned power plant construction in Lower Base.

1. On February 13, 1998, the former CUC Executive Director issued a memorandum to the former Secretary of Public Works informing him that CUC needed to relocate the DPW warehouse to make way for the 80 MW power plant project.
2. Transcripts of minutes of CUC Board meetings cited that CUC's offices were relocated primarily to make way for the proposed power plant:

February 2, 1999 - "...this move was being undertaken because the Lower Base building does not meet safety and disability standards and *most important, to make way for the new power plant.*"

June 9, 1999 - "The Executive Director then remarked that the CUC offices were moved to Dandan *to make way for the new power plant*, and the facility has proven to be more efficient for internal coordination and communication."

July 27, 1999 - "Executive Director stated that CUC vacated the Lower Base warehouse because it will be torn down *to make way for the 80 mw power plant.*" [Emphasis Added]

3. OPL provided OPA a letter from the former CUC Executive Director, dated August 22, 1997, requesting that the Director of Public Lands designate three unsurveyed parcels of land in Lower Base for construction of the new power plant, a desalinization plant, and a new administration building. Subsequently, on May 25, 2000, the Board of Public Lands approved the designation of the Lower Base area for the 80 MW power plant; however, no actual copy of a deed of assignment was provided.

Expenditures Incurred Before and After Enactment of Public Law 12-1

On January 13, 2000, CUC cancelled RFP 97-0025 in order to issue a new RFP that would reduce the proposed power generation capacity from 80 to 60 MW. However, on March 31, 2000, the CNMI Legislature enacted PL 12-1 to reinstate RFP 97-0025 and compel CUC to award the power purchase agreement to a proposer who met certain requirements of PL 12-1.

CUC officials requested that OPA present project costs before and after the enactment of PL 12-1 because they believed that the costs of negotiating with Enron had increased significantly since passage of PL 12-1. The table below shows that fifty seven percent of project expenditures were incurred after the Energy Sufficiency Assurance Act of 2000 (Public Law 12-1) was enacted on March 31, 2000.

	Fiscal Year 1998	Fiscal Year 1999	Fiscal Year 2000	Fiscal Year 2001	Total
<u>Before Passage of Public Law 12-1</u>					
Travel	\$54,728	\$3,623	-	-	\$58,351
Professional Services	60,619	160,254	127,286	30,640	378,799
Rental Costs ⁴		213,722	178,398		392,120
	115,347	377,599	305,684	30,640	829,270
<u>After Passage of Public Law 12-1</u>					
Travel	-	-	39,380	93,653	133,033
Professional Services	-	-	32,958	393,642	426,600
Rental Costs			178,398	387,129	565,527
	-	-	250,736	874,424	1,125,160
Total Project Expenditures	\$115,347	\$377,599	\$556,420	\$905,064	\$1,954,430

Table 2 Distribution of Expenditures Before and After Passage of Public Law 12-1

CUC Response

In its response dated September 23, 2002, CUC identified certain limitations of the compilation report. CUC stated that OPA's draft report did not address the (1) the basis for the decisions made; (2) internal and external forces affecting the decision making process; (3) an analysis of ongoing and constantly changing business and economic environment; and (4) the changes in their decisions based on legal requirements. CUC stated that any individual may assume that decisions made were outside CUC's fiduciary responsibility resulting in a waste of public funds.

CUC maintained that rental costs should not be included in the compilation report. It said that the decision to vacate and demolish the old facilities and to relocate its office to Dandan was a real and proper exercise of its fiduciary responsibilities. Finally, it stated that OPA's report should disclose that no analysis was performed to determine the value of professional services and travel expenses.

OPA Comments

OPA agrees that the compilation report had limitations as discussed by CUC. Based on review of minutes of CUC's Board meetings, Office of Public Land records and other documents as

⁴Rental costs would have been incurred regardless of whether or not Public Law 12-1 was enacted.

discussed in this report, OPA continues to believe that the rental of CUC's Dandan office is a part of the Saipan power plant project cost. Furthermore, CUC, in its response, did not clearly state the reasons for excluding such costs.

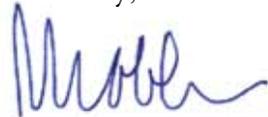
CUC correctly pointed out that OPA did not perform an analysis of the value of CUC's travel and professional services costs because such analysis was not part of our objective. As such, OPA did not question the propriety of these costs nor conclude that such costs were waste of public funds. Also, OPA did not address whether such costs were incurred beyond CUC's fiduciary responsibilities.

CONCLUSION

The procurement process for the Saipan Power Project began in February 1997 when CUC issued RFP 97-0016. Despite the considerable amount of time and resources expended over almost four years, CUC has not negotiated a contract. Such time and effort was expended mostly on: (1) evaluation and re-evaluation of proposals, (2) adjudication of protests and appeals, (3) negotiation with the selected offeror(s), and (4) evaluation of Saipan's changing power supply needs. The various protests and appeals, reassessment of power requirements, and finally disagreement between CUC and the Legislature on project implementation, all contributed to the lengthy procurement process. This procurement process resulted in CUC incurring almost \$2 million in additional general and administrative costs.

Thank you for the opportunity to provide information concerning the 80/60 MW power plant project.

Sincerely,



Michael S. Sablan, CPA
Public Auditor

cc: Acting CUC Executive Director
CUC Chairman of the Board
Governor
Lt. Governor
President of the Senate
Speaker of the House of Representatives
Attorney General
Secretary of Finance
Press

Events and Costs Related to the Procurement and Negotiation of CUC's Proposed 80/60 Megawatts Saipan Power Plant Project

A chronology and time line of significant events and costs relating to the procurement and negotiation of CUC's proposed 80 MW power generation project for Saipan follows. The chronology covers the period from issuance of the 1st RFP until the cessation of negotiations with Enron, and shows the time elapsed for specific events since this 1st RFP.

Document or Event	Date of Document or Event	Elapsed Months Since Original RFP	Particulars
<u>Fiscal Year 1997</u>			
CUC published RFP 97-0016	February 14, 1997		Proposals under RFP 97-0016 were solicited from qualified architectural and engineering firms to develop an RFP for a 80 MW power generation system.
Notification to proposers under RFP 97-0016	April 28, 1997	2.4	CUC's legal counsel notified the successful proposer and stated that the CUC Board would meet in a few days to discuss contract details.
Cancellation of RFP 97-0016	May 2, 1997	2.6	CUC's Board Chairman cancelled the RFP 97-0016 to expedite the procurement process. This action was criticized. According to the critic (Enron), "Without the benefit of expert advice, CUC management was unable to effectively plan the solicitation of proposals for (power generation) or evaluate the proposals it received."
CUC published RFP 97-0025.	May 29, 1997	3.5	Under RFP 97-0025, CUC solicited proposals from independent power producers to provide an 80 MW power generation facility in Saipan.
Receipt of Proposals	July 21, 1997	5.2	Deadline for submission of proposals. CUC received 13 proposals from independent power producers worldwide.
Fiscal Year 1997 Total Costs Incurred -		\$ 0	
<u>Fiscal Year 1998</u>			
Selection of Proposals	November 14, 1997	5.6	CUC determined that six proposals were within the competitive range. It sent notification letters addressing evaluation results to all 13 offerors.
First Protest	November 24, 1997	9.4	PMIC/Ogden, one of the offerors excluded in the competitive range, filed a protest with CUC.
Extension of decision period for 1 st protest	January 13, 1998	11.1	Acting CUC Director certified the complexity of the protest and extended the decision for another two weeks.
Denial of the 1 st protest	January 26, 1998	11.5	CUC denied the protest of PMIC/Ogden, in its entirety.
Appeal of 1 st protest Decision	February 4, 1998	11.8	PMIC/Ogden, through its legal counsel, appealed the protest decision to OPA.
Draft of Power Purchase Agreement sent to selected offerors	March 6, 1998	12.8	CUC sent draft Power Purchase Agreement to all offerors in the competitive range to obtain their best and final offers.
Evaluation of final offers	April 30, 1998	14.7	CUC evaluated the best and final offers submitted by proposers in the competitive range.

Events and Costs Related to the Procurement and Negotiation of CUC's Proposed 80/60 Megawatts Saipan Power Plant Project

Document or Event	Date of Document or Event	Elapsed Months Since Original RFP	Particulars
Meeting with two leading offerors	May 31, 1998	15.7	The CUC selection committee and Board Operations Committee met with two leading firms (Enron and Marubeni) along with legal counsel Ray Kindley and Engineer Curtis L. Bagnall of CH2M/Hill for final evaluation.
OPA decision (No. BP-A016) on 1 st appeal	June 18, 1998	16.3	OPA granted, in part, the appeal filed by PMIC/Ogden. OPA recommended that CUC redetermine the competitive range pursuant to CUC's procurement regulations.
CUC request for reconsideration	June 26, 1998	16.6	CUC filed a request for reconsideration of OPA's decision (No. BP-A016).
CUC selection	June 26, 1998	16.6	CUC Board of Directors voted to select Marubeni/Sithe for contract award.
Appeal for 2 nd protest	July 22, 1998	17.4	Alsons/Tomen/Singapore Power/Tan Holdings (the "Consortium"), one of the offerors excluded in the competitive range, filed an appeal with OPA for CUC's failure to act on its two protests.
Suspension of appeal	September 10, 1998	19.1	OPA suspended the two appeals filed by the Consortium in light of a new protest filed with CUC.
Approval of Marubeni/Sithe Power Purchase Agreement	September 15, 1998	19.3	The CUC Board approved the final Power Purchase Agreement with Marubeni/Sithe.
OPA Decision (No. BP-A016.1) Denial of request for reconsideration	September 22, 1998	19.5	OPA denied CUC's request to reconsider its decision (No. BP-A016.1).
Fiscal Year 1998 Total Costs Incurred - \$ 115,347			
FISCAL YEAR 1999			
Motion to alter or amend decision	October 2, 1998	19.8	CUC again filed a motion requesting OPA to amend or alter its decision (No. BP-A016.2). It requested that OPA delete reference to a memorandum of the acting Power Division manager because the memo was covered by "attorney-client" privilege.
RFP 99-003	October 16, 1998	20.3	CUC informed OPA that it had issued RFP 99-003 to solicit the services of an engineering firm to re-evaluate the 13 proposals.
CUC denial of the Consortium's and Enron's protests	October 20, 1998	20.4	CUC denied the protests filed by Consortium and Enron on October 20, 1998.
OPA Decision (No. BP-A016.2)	October 23, 1998	20.5	OPA denied CUC's motion to alter or amend decision on request for reconsideration of previously issued Decision No. BPA-016.1.
RFP 99-003	November 1, 1998	20.8	CUC issued RFP 99-003 to solicit the services of an engineering firm to re-evaluate the competitive range for the 13 proposals.

Events and Costs Related to the Procurement and Negotiation of CUC's Proposed 80/60 Megawatts Saipan Power Plant Project

Document or Event	Date of Document or Event	Elapsed Months Since Original RFP	Particulars
Consortium appeal	November 3, 1998	20.9	Consortium filed an appeal with OPA on CUC's October 20, 1998 denial and inaction on its protest.
Enron appeal	November 3, 1998	20.9	Enron Mariana Power (Enron), a close competitor of Marubeni/Sithe, likewise filed an appeal with OPA on CUC's October 20, 1998 denial of its protest.
Consortium's second appeal	December 7, 1998	22.0	The Consortium filed its 2 nd appeal with OPA on CUC's November 20, 1998 denial of its September 23, 1998 protest.
CUC response to the Consortium and Enron appeals	December 14, 1998	22.3	CUC submitted its comments to Enron's November 3 appeal and to the Consortium's earlier two appeals.
OPA suspended the appeals of the Consortium and Enron	December 22, 1998	22.5	OPA suspended consideration of the appeals filed by Enron and the Consortium in light of CUC's plan to conduct a new round of evaluation.
CUC contract with Burns and McDonnell	January 25, 1999	23.7	CUC entered into a contract with Burns and McDonnell, a Missouri-based engineering firm, to conduct the re-evaluation of the 13 proposals.
Burns & McDonnell Reevaluation Report	March 15, 1999	25.3	Burns and McDonnell issued its report on the re-evaluation. Nine proposers were included in the competitive range, with Marubeni at the first rank.
Short list of 9 proposers within the competitive range	April 23, 1999	26.6	Burns & McDonnell provided CUC with a short list of 9 firms determined to be within the competitive range.
Request for best and final offer	June 4, 1999	28.0	This request was a package also developed by Burns & McDonnell and then issued to the 9 firms determined to be within the competitive range.
Submission of best and final offer	June 18, 1999	28.5	Only 5 of the 9 firms submitted their best and final offer. Based on Burns & McDonnell's evaluation, Enron received the highest score.
Fiscal Year 1999 Total Costs Incurred - \$ 377,599			
<u>Fiscal Year 2000</u>			
Final selection	October 13, 1999	32.4	Burns & McDonnell presented the results of the evaluation of the best and final offers
Power supply options contract to evaluate	November 8, 1999	33.2	In November 1999, the CUC Board decided to reassess the power needs on Saipan in light of the current economic conditions. It awarded a contract to evaluate power supply options to Burns & McDonald.
Evaluation results	December 30, 1999	35.0	Burns & McDonald recommended reducing the power generation capacity to be solicited to 60 MW.
Cancellation of RFP 97-0025	January 13, 2000	35.4	The CUC board cancelled RFP 97-0025 and directed CUC management to award the contract for the construction of a 60-MW power plant.

Events and Costs Related to the Procurement and Negotiation of CUC's Proposed 80/60 Megawatts Saipan Power Plant Project

Document or Event	Date of Document or Event	Elapsed Months Since Original RFP	Particulars
Energy Sufficiency Assurance Act	March 31, 2000	38.0	The CNMI Legislature enacted a law, PL 12-1, to eliminate any and all legal impediments to proceeding with the immediate award of a contract based on proposals received for RFP 97-0025, and require CUC to negotiate a contract for immediate construction of an expandable 60-MW power plant pursuant to the Burns & McDonnell recommendation. The law also declared that the CUC board's cancellation of RFP-0025 was contrary to the public interest and inconsistent with the Burns & McDonnell recommendation.
Conditional award of contract to Enron	May 26, 2000	39.9	The CUC Board conditionally awarded the contract to Enron International Mariana Power, Inc. (Enron) pursuant to the directive of PL 12-1 and subject to future negotiations.
Three protests	June 12, 2000	40.5	Immediately after the conditional contract award to Enron, CUC received new protests from three offerors. CUC denied the three protests on September 1, 2000 and on September 18, 2000, the denial was appealed to OPA. On February 5, 2001, OPA decided (BP-A025) to dismiss the appeals of the three protests decisions.
Search for legal representatives and other preparations	June to October 6, 2000	44.3	This period was spent for seeking legal representation and doing other preparations for negotiations with Enron. Significantly, between September 15 and October 6, seven CUC representatives visited Honolulu and Houston to meet with Enron's law firm (Fulbright & Jaworski) and its consultant (Burns & McDonnell).
Fiscal Year 2000 Total Costs Incurred - \$556,420			
<u>Fiscal Year 2001</u>			
CUC began negotiations	October 17, 2000	44.7	CUC officials, consultants, legal advisers started rounds of negotiations with Enron officials. 5 CUC representatives went to Honolulu and Los Angeles from October 17 to November 1 for these negotiations.
Enron letter to negotiations team legal consultant (Fulbright & Jaworski)	March 19, 2001	49.8	An Enron vice president wrote that "Enron has made the decision not to pursue the Saipan Power project." He also mentioned that their partner in the procurement of the project, Burmeister & Wein, had indicated a desire to continue the development of the project.
Enron letter to negotiations team leader	April 5, 2001	50.4	Enron vice president advised CUC that Enron's business strategy has changed and pursuing the Saipan Power project was no longer consistent with its goals.

Events and Costs Related to the Procurement and Negotiation of CUC's Proposed 80/60 Megawatts Saipan Power Plant Project

Document or Event	Date of Document or Event	Elapsed Months Since Original RFP	Particulars
Meeting & presentation of Enron Guam Piti Corp.	July 25, 2001	54.1	In July, the general manager of vice president of Enron Guam Piti Corp. (Enron-Guam) contacted CUC to inform CUC that the earlier withdrawal of Enron had no force or effect. In this meeting, the Enron-Guam manager represented that he was speaking for Enron and that he believed "there was still a contract award outstanding as far as Enron is concerned." Enron-Guam presented a new proposal to CUC which included terms transferring operations of the power plant to Burmeister & Wein and Mitsue Engineering, with Enron-Guam remaining as a part of the commercial team.
Letter from Enron vice president	September 4, 2001	55.4	The vice president of Enron International Mariana Power Company, Inc. (Enron Marianas or commonly referred herein as Enron) wrote to CUC's legal counsel to discuss the role of Enron-Guam's general manager. Among the contents of the letter was the statement that "Mr. LaCroix, also an officer of Enron-Guam, has assumed responsibility for transitioning the project from my oversight."
Burns & McDonnell report: Review of Generation and Transmission Expansion	October 18, 2001	56.9	As requested by CUC in August 2001, Enron's consultant Burns & McDonnell issued a report. The report stated that: "... the installation of 60 MW of capacity and the 115kV transmission system on the island of Saipan are not needed, nor are they in the best interest of CUC. With the current and forecasted load conditions, the IPP approach pursued by the RFP-0025 should be abandoned."
Fiscal Year 2001 Total Costs Incurred - \$905,064			
Total Costs Incurred for FY 1998 thru FY 2001-		\$1,954,430	
<u>Fiscal Year 2002</u>			
Enron bankruptcy	December 2, 2001	58.4	Enron files for Chapter 11 bankruptcy protection.
Delisting with NYSE	January 15, 2002	59.9	The New York Stock Exchange suspends trading of Enron stock and moves to formally delist it.

CUC Travel Expenditures Related to the 80/60 Megawatts Saipan Power Plant Project

Travel Authorization	Period of Travel	No. of Travelers	Purpose of Travel	FY 1998	FY 1999	FY 2000	FY 2001	Total
<i>Before Passage of Public Law 12-1</i>								
98-308 to 98-312	5/16-19/98	5	Portland: To meet with Enron & Marubeni/Sithe along with CUC's legal and engineering consultants to finalize 80 mw contract	\$28,675				\$28,675
98-334	5/21-22/98	1	Saipan: To meet with operations committee and Executive Director regarding 80 mw Power Purchase Agreement	504				504
98-446,98-447, 98-448,98-454	8/21-9/02/98	4	San Diego California: To meet with Enron's Counsel and Marubeni/Sithe officials regarding finalization of the project	24,678				24,678
98-472	9/20-21/98	1	Saipan: To meet with House Public Utilities, Transportation & Communications Chairman & CUC management re: 80 mw project	442				442
98-487, 98-488	9/21/98	2	Saipan: To attend general board meeting regarding power purchase agreement for Saipan 80 mw project	429				429
99-222, 99-223	3/9-10/99	2	Saipan: To attend board meeting regarding status of independent bidders for 80 mw project		608			608
99-247	4/21-5/05/99	1	Kansas: To meet with Burns & McDonnell to finalize evaluation package for best and final offers for the project		2,646			2,646
99-292	5/11-12/99	1	Saipan: To meet with legal counsel and Assistant Attorney General to discuss best and final offer for 80 mw power plant project		369			369
Subtotal - Before Passage of PL 12-1				54,728	3,623	-	-	58,351
<i>After Passage of Public Law 12-1</i>								
00-422,00-423	7/12-15/00	2	Hongkong: To meet with prospective law firms regarding the project			4,684		4,684
00-531 to 0535	9/15-10/06/00	7	Houston/Honolulu: To meet with Fulbright & Joworski, and Burns & McDonnell regarding the project			34,696		34,696
00-538, 00-539	10/17-11/01/00	5	Honolulu/LA: To meet with Fulbright and Joworski and Enron officials regarding the project				33,268	33,268
01-026,01-034, 01-036, 044/45	11/12-12/01/00	3	Houston: To finalize power purchase agreement with Enron				15,274	15,274
01-073,076/78	12/01/00	1	Guam:Meet Guam Power Authority officials to discuss Enron contract				1,051	1,051
01-088	1/10-13/01	1	Saipan: Conduct negotiation and review power purchase agreement with Enron				910	910
01-157	1/12-17/01	1	Saipan: Meet with Fulbright & Joworski and get information re: project			2,153		2,153
01-164	1/31-2/22/01	6	Los Angeles: To continue negotiation with Enron and work with construction transfer agreement			40,628		40,628
01-202 to 01-206, 01-210	3/21-23/01	1	Saipan: Meet with counsel and negotiation team on Enron comments			369		369
01-278								
Subtotal - After Passage of PL 12-1				-	-	\$39,380	\$93,653	\$133,033
TOTAL				\$54,728	\$3,623	\$39,380	\$93,653	\$191,384
Total Travel Expenditures Incurred				\$195,427	\$160,843	\$283,894	\$412,040	\$1,052,204
Percentage of Project's Travel Expenditures to Total CUC Travel Expenditures				28.00%	2.25%	13.87%	22.73%	18.19%

Professional Services Paid for CUC's 80/60 Megawatts Saipan Power Plant Project

Contract No.		Services Rendered				Total
		FY 1998	FY 1999	FY 2000	FY 2001	
<u>Before Passage of Public Law 12-1</u>						
CUC-PG-98-C018	Provide expertise services for drafting purchase agreement for the new 80 MW Power Generation.	\$35,619	\$22,841	\$42,201		\$100,661
CUC-PG-99-C010	Provide technical evaluation of project proposals, preparation of power purchase agreement, evaluation of power supply options and review of generation and transmission expansion		91,788	83,275	30,640	205,703
CUC-ED-C047	Provide legal services as required by CUC to represent CUC in procurement matters, including procurement protests, arising from CUC-RFP-97-0025	25,000	45,625	1,810		72,435
Subtotal		60,619	160,254	127,286	30,640	378,799
<u>After Passage of Public Law 12-1</u>						
CUC-BD-00-C026	Provide legal assistance to the CUC Board in the selection and retention of off-island legal counsel to advise and represent CUC in connection with the new power plant project.			32,958	96,347	129,305
CUC-BD-00-C034	Provide legal representation to CUC concerning proposed 60 MW Power Generation Project in Saipan				291,672	291,672
CUC-BD-00-C037	Provide legal services for all matters relating to or arising out of Public Law 12-1, CUC RFP 97-0025 (80 MW Power Plant Project), and administrative protests or judicial review thereof relating to the conditional award to Enron Corporation for the Saipan Power Plant Project.				5,623	5,623
Subtotal		-	-	32,958	393,642	426,600
TOTAL		\$60,619	\$160,254	\$160,244	\$424,282	\$805,399
Total Professional Services Incurred		\$930,887	\$943,577	\$1,205,614	\$1,319,196	\$4,399,274
Percentage of Professional Services Incurred to Total CUC Prof. Services		6.51%	16.98%	13.29%	32.16%	18.31%

